
Strategic Alignment With Collaboration Is Essential to a Life Sciences M&A Exit

Speakers: Melinda Rudolph and Amanda Hassan

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Amanda Hassan (00:06):

Hi, Mindy. It's great to see you. Looking forward to discussing M&A exit strategy today, particularly with respect to life science companies with existing collaboration partners. As you are aware, I'm Mandy Hassan, a partner in our healthcare and life science department. I am a member of our license and collaboration team. So I often work with our clients on joint development, licensing, sponsor research, and manufacturing and distribution arrangements. And I often get the pleasure of working with you, our leader of the group.

Melinda Rudolph (00:38):

Yes. It's lovely to see you, Mandy. I am Mindy Rudolph. I'm a partner of the firm based in the Philadelphia office. I'm the leader of the licensing and collaborations group, and I've been practicing in the area of life science transactions for over 30 years, and I've seen a lot of development collaborations. So much of the work that you and I do bridges the intersection of science, business, and legal. And when it comes to life sciences, companies managing and addressing collaborations in the context of an exit, we combine our technical fluency with our understanding of the role of the collaborator to ensure the transaction is successful from both a business and a legal perspective.

Amanda Hassan (01:22):

You are so correct in that, Mindy. Balance is very important to what we do. And when it comes to a life science company considering an M&A exit, sometimes it can have blinders on with respect to collaboration partners that will ultimately not be a party to the transaction, but perhaps are still essential to the deal. This can make strategic alignment with existing collaboration partners critical for a successful exit.

Melinda Rudolph (01:47):

Absolutely. Collaborations often preview the target's assets and can direct buyer interests, but they also create influence points that can be potential tripping hazards in an exit transaction.

Amanda Hassan (02:02):

When a target is considering an M&A exit, what are some of the common influence points that a target should be aware of and how should it address them?

Melinda Rudolph (02:11):

Well, ultimately, the goal is to clear potential roadblocks upfront so buyer see a clear path to close. Evaluate collaboration agreements for sale restrictions, consent notice requirements, right of first refusal, right of first offer, termination of penalty triggers, and board and observer rights. It's important to identify each partner's influence and deal importance, then develop an engagement plan that shares only essential information under titan confidentiality restrictions with both the potential acquirer and maybe also with the collaboration partner, depending on what the collaboration agreement says.

Amanda Hassan (02:56):

That's obviously a lot to balance, especially for a company with several collaboration arrangements. For companies considering an exit, how should they approach existing partners without signaling too early that a potential sale is in play?

Melinda Rudolph (03:11):

Well, this is a very tricky and complex question, and we always have to remember that the rules for publicly traded companies are different than the rules for private companies, and that we have to keep in mind that a publicly traded company has certain restrictions that a private company may not. However, it's very important to coordinate with the acquirer council early on as to what can be shared and with whom, so the collaboration partners feel respected, not surprised. However, it's a two-way street, and your collaboration partners may have limitations on what the target can share with the potential acquirer. Potential targets can be proactive in the collaboration contracting process by including in their confidentiality provisions in the collaboration agreement, exceptions for potential investors, strategic partners, and others. This can allow the collaboration information to be given to the potential acquirer to a certain degree. Likewise, a collaborator can build a notice requirement in its contracts so that it's made aware of potential acquisitions in a timely manner. Again, keep in mind that the rules for publicly traded companies may be different.

Amanda Hassan (04:31):

Very, very good point. And as we do know, certain partners could be critical for the deal, as IP is often the core driver of an M&A transaction. How should companies handle collaboration IP and licenses so valuations don't take a hit and buyers have confidence post-closing?

Melinda Rudolph (04:48):

Well, you're certainly right about that. I mean, our partner's intellectual property can make or break the deal in a life science transaction. It's important to have a full understanding of the collaboration IP and being on the same page with your collaboration partners is essential. If possible, and again, I bring up public companies, the rules can be different, the earlier, the better. Think about the impact of the exit on your collaborator. Will the acquirer want to maintain the collaboration or parts of it? Does the collaboration agreement facilitate the acquirer's business objectives post-merger? Does the collaboration agreement permit the collaboration

partner to terminate in the event of a change of control? If the successor company wants to maintain all or part of the collaboration, how does this impact the operation of the collaboration, such as communication mechanisms between the parties and operation of joint collaboration agreements?

Amanda Hassan (05:50):

All very, very important points, Mindy. And as always, this has been incredibly insightful. Thanks for sharing your thoughts, Mindy.

Melinda Rudolph (05:57):

Oh, it was great to have a chance to discuss this with you, Mandy. Thank you for including me, and thank you all for sharing your time with us today.

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